

IN THE UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 6

JO ANN VAUGHN,

CASE NO. 06-CA-209583

Complainant,

v.

PARKWAY FLORIST, INC.,

JUDGE GOLDMAN

Respondent.

PAUL CAVALERO,

CASE NO. 06-CA-217020

Complainant,

v.

PARKWAY FLORIST, INC.

Respondent.

Type of Pleading:

**BRIEF FOR RESPONDENT**

Filed on Behalf of Parkway Florist,  
Inc.

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### **Facts**

The two cases referenced above, *Jo Ann Vaughn v. Parkway Florist, Inc.*, Case No. 06-CA-209583 and *Paul Cavalero v. Parkway Florist, Inc.*, Case No. 06-CA-217020 were consolidated by Nancy Wilson, Regional Director, by Order dated June 18, 2018. Both cases proceeded to trial over the course of two days, the first day being July 30, 2018 and the second day being September 6, 2018. After the close of testimony and brief oral arguments, this Honorable Court Ordered the parties to file Briefs in support of their respective positions. This Brief on behalf of Respondent follows:

While the *Vaughn* case and *Cavalero* case were consolidated and have certain common issues, a recitation of the facts adduced at trial with respect to the separate charges is the most effective way to, in Respondent's opinion, present a coherent and easy-to-follow recitation of the facts.

#### **A. Jo Ann Vaughn v. Parkway Florist, Inc., Case No. 06-CA-209583**

The Vaughn charge involves Vaughn's alleged termination from employment by Parkway Florist, Inc. on October 23, 2018, as the result of alleged protected concerted activity engaged in by Vaughn on October 20, 2017 (Complaint, Paragraph 7).

The allegation advanced by General Counsel at trial was that on October 20, 2017, Jo Ann Vaughn and Paul Cavalero engaged in protected concerted activity, first, when Cavalero came to Vaughn's defense and asked Bakin to calm down due to Bakin yelling at Vaughn (TR 22). In addition, General Counsel argued that Vaughn raised the concerted concern about how employees are afraid to ask Bakin questions and instead ask each other questions because Bakin often yelled and overreacted when employees asked her questions (TR 23). The General Counsel alleged that on October 20, 2017 Bakin sent Vaughn home early because she had

engaged in protected concerted activity and that Cheryl Bakin discharged Jo Ann Vaughn for the protected concerted activity on October 23, 2017 (TR 23).

In support of Vaughn's charge, General Counsel offered first, the testimony of Jo Ann Vaughn (TR 31).

Jo Ann Vaughn testified that her job duties at Parkway Florist, Inc. (hereinafter "Parkway") were to "answer the phone, wait on customers, to take orders, to process flowers." (TR 32) Vaughn described her job duty of processing flowers as meaning "when the flowers come in from the wholesaler, they're bound in packaging and you take the packaging off and take the excess greens off and you trim them and put them into water in buckets." Id. Vaughn testified she very rarely did any floral arrangements Id. and that she generally worked a part-time schedule of Monday, Wednesday and Friday 9:00am to 3:00pm Id.

Vaughn testified that her immediate supervisor at Parkway was Cheryl Bakin and that there were not any other supervisors or managers at Parkway during the time she worked there Id. Vaughn was employed at Parkway from January 2017 until October 23, 2017 (TR 31).

Vaughn testified that when she began working for Parkway in January 2017, neither she nor any other employees had any complaints regarding Cheryl Bakin's treatment of employees (TR 36). Vaughn testified that she attended outings or celebrations for Cheryl's birthday at the end of April, 2017 and that Cheryl hosted a cook-out at her house (TR 36-36). Vaughn testified that around the fall of 2017, she noticed a change in Cheryl's demeanor, and that Cheryl became short and abrupt and gruff and difficult to deal with (TR 37). Vaughn testified that she discussed Cheryl's general abruptiveness and gruffness and inability to "conversate" with other employees and she indicated that Cheryl would answer employees' questions, whenever she was acting that way, in a short, abrupt and rude fashion (TR 38).



Vaughn testified that she spoke with a number of other employees about Cheryl's mood around the "early wedding season in the fall" of 2017 and clarified that would have been at the "end of August-ish" (TR 39). Vaughn testified that because "Cheryl isn't particularly approachable as far as asking questions to her directly. So we began asking each other." (TR41-42) Vaughn testified she spoke with one or more of her co-workers on a daily basis about Cheryl's mood and at some point between August 1, 2017 and October 20, 2017 she recalled having a conversation with one or more of co-workers about the need to address Cheryl's treatment of employees with Cheryl (TR 43-44). Vaughn testified that she and Paul and Kaydi brainstormed about strategies to address Cheryl's treatment of employees and that employees decided that Vaughn would be the one to discuss this concern with Cheryl. (TR 44)

Vaughn testified that in the fall of 2017, she had a discussion with Cheryl, following her discussion with her co-workers, in the white van on the way to a wedding at the White Barn (TR 44-45). Vaughn was alone with Cheryl Bakin when she told Cheryl "just that, you know, we wanted her to do well because if she does well, we were all going to do well, that we were here to help her and we wanted to be team players and we were there to support her and help her." (TR 45). Vaughn testified that Cheryl did not respond to those comments and that Cheryl never spoke to her about what she said to Cheryl during the drive to the White Barn Id. Vaughn recalled the conversation with Cheryl occurring mid-September, but could not remember the exact date Id.

Vaughn testified that after this specific discussion with Cheryl, she spoke to Paul and Kaydi the same day and told them what she had talked about and what she had said to Cheryl and that there wasn't really any response back "and that I tried." (TR 46) Vaughn testified that Paul was fine with what she had said to Cheryl Id.

Vaughn went on to testify about the events of October 20, 2107 and indicated that on that day she was helping prepare for a wedding and was going through flowers (TR 47). Vaughn testified she was working near Paul and that Kaydi was downtown at the wholesaler and Alex was upstairs Id. Vaughn testified she noticed “the hydrangeas were going down. They had brown spots over a lot of them and some of them, they were limp.” (TR 47). Vaughn told Cheryl that the hydrangeas were going bad and Cheryl, according to Vaughn, “snapped and said she was aware and that Kaydi was already downtown picking up other ones and that I shouldn’t worry about it.” (TR 48). After the hydrangeas, Vaughn testified she began sorting pink gerber daisies Id. Vaughn testified she noticed that the gerber daisies looked like they were going down and bad as well, that they were limp and turning brown (TR 49). Vaughn testified she mentioned to Cheryl that the gerber daisies were “going down” and that Cheryl “snapped at me again and said, just cut them and put them in water.” (TR 49). Vaughn testified that she “just said okay” and proceeded to do what Cheryl asked and to process the gerbera daisies Id. Vaughn went on to state that upon picking them up, she noted that the stems were gelatinous and slimy and she didn’t think it was a good thing and she wasn’t sure that she knew and Kaydi was downtown so she asked Paul if the flowers looked normal or okay to him (TR 49-50). Vaughn testified that Paul came over to look at the flowers and at that point “Cheryl started screaming and yelling and told us two to shut the fuck up and just do what we were told and there was no reason that the two of us needed to be fucking talking.” (TR 50). Vaughn testified that Cheryl startled her and that “Paul kind of intervened and said that she didn’t need to be speaking to us that way and that he works hard for her and that he comes in on his days off and works overtime, and they continued going on after that.” (TR 50-51). Cavalero testified differently about what he said to Cheryl Bakin at that point and his direct testimony will be discussed *infra*.

Vaughn testified that after Paul and Cheryl were screaming and yelling for a while, Paul said he had to go outside to cool off, and he did. (TR 51). Vaughn testified that after Paul left, Cheryl was slamming square buckets around and moving flowers around and that while Cheryl was doing this, Vaughn was “standing there stunned.” (TR 52).

Vaughn’s testimony was then as follows:

Q. What happened next?

A. I said to Cheryl that – I asked her if she wanted to know the reason that we ask each other questions and not her.

Q. And did she respond?

A. Not particularly that I remember.

Q. And what happened next?

A. I told her that we ask each other questions and not her because this is the type of response that we get.

Q. And what happened next?

A. She told me to get my stuff and go.

Q. Was this immediately or soon thereafter?

A. Soon thereafter.

(TR 52-53).

Vaughn testified that Cheryl did not tell her she was being disciplined and that after she left the shop, she went to check on Paul (TR 53). She stated that Paul gave her a hug and apologized for leaving her alone with Cheryl Id.

On Monday, October 23, 2017, the next day Vaughn was scheduled to work, she testified she arrived at approximately 8:45am and sat in the parking lot until 8:58am (TR 55-56). Vaughn



testified she walked into Parkway, went to the bathroom, came out and Cheryl was standing there with her check in Cheryl's hand. (TR 56-57). Vaughn testified that Cheryl told her that her last day with her was Friday and here is her check (TR 57). Vaughn testified that Cheryl did not give her a reason that she was fired, did not give her a discharge letter or any document at that time or thereafter describing the reason for her termination (TR 57).

On cross-examination, Vaughn admitted that in the written Affidavit she gave to General Counsel in November of 2017, she made no mention of her having discussions with other employees about Cheryl Bakin's attitude (TR 59-60). Vaughn testified that the reason she didn't put any reference to discussions with fellow employees in her Affidavit was that no one asked her about it until sometime in 2018 when Megan Phillips, General Counsel, asked her about conversations she had with other employees about Ms. Bakin's attitude (TR 59 – 62).

Vaughn gave an example of how Bakin was allegedly abrupt with her and stated "with me, just any – if you had a question or if you were in the middle of doing something, it would be – and it wasn't what she wanted, she would just grab it out of your hand, no, and slam it down on the counter, this is what I want." (TR 66).

Vaughn testified that sometime in September 2017, Bakin did that to her, after she had been working at Parkway for eight months. (TR 66-67). Vaughn testified that at certain times she was assigned new tasks, she told Ms. Bakin that she didn't need to be told what to do, that she already knew how to do those tasks (TR 67). Vaughn admitted that when she didn't know how to do a task, Cheryl corrected her or she asked Cheryl about how to do it Id. Vaughn testified that when Cheryl corrected her, that's the shortness and abruptness that Vaughn was talking about (TR 68).

Vaughn admitted that Cheryl Bakin, as the owner or sole shareholder and president of Parkway, had the right to tell her how Cheryl wanted to have the job done and that it was perfectly within Cheryl's right to tell Vaughn or other employees that Cheryl didn't want a job in a particular way (TR 68).

Vaughn went on to describe how when she was loading something in the truck and it wasn't the way that Cheryl wanted, Cheryl would grab it out of her hand and put it in so she was just left standing there and "you couldn't ask why because there was no discussion, you did it this way." (TR 69). Vaughn stated that she was startled by Bakin's aggressiveness, "people grabbing things out of your hand and taking them, is startling" *Id.* but Vaughn admitted that she never mentioned being startled by that to Cheryl Bakin. Vaughn described how Cheryl told Kaydi that something Kaydi had done was not the way that Cheryl wanted it, that Cheryl wanted it a different way and that Cheryl's tone was short, aggressive and abrupt (TR70). Vaughn never heard Kaydi say to Cheryl Bakin, please don't do that and never heard Paul say to Cheryl Bakin, don't talk to me that way, except on October 20, 2017. Vaughn did hear Paul say that he would do however Cheryl wanted, just to tell him how she wanted it done and that's what Cheryl was doing. (TR 70-71).

Vaughn clarified her discussions with Paul and Kaydi about Cheryl's attitude in the fall of 2017 and that they discussed that Cheryl was difficult to approach and to deal with and to talk to in relation to work and how Cheryl wanted things done and that her abruptness was difficult to handle (TR 72-73). Vaughn admitted that her complaint about Cheryl was not about what Cheryl was doing, but how Cheryl was saying it (TR 73-74). Vaughn admitted her complaint was not about what Cheryl was telling her to do, but that her complaint was how Cheryl was going about it. (TR 74).

At Transcript pages 74 through 76, Vaughn reiterated her discussion with Cheryl Bakin in the van on the way to the White Barn and that in that discussion, she told Cheryl "that we were team players and that we were there to help her and that we like working there, that we wanted her to do well because if she does well, we would do well." (TR 74). Vaughn testified that that's what the other two employees, Paul and Kaydi asked her to tell Cheryl and that was what Paul, she and Kaydi agreed that Vaughn would say to Bakin. (TR 75). Vaughn reiterated that she, Paul and Kaydi had a conversation where they elected her to be the spokesperson for them and that they wanted Vaughn to tell Cheryl Bakin exactly what she told her and nothing more. (TR 75-76). Vaughn testified that Cheryl Bakin did not have any response to those comments and that when she reported back to Kaydi and Paul, they weren't surprised. (TR 76). Vaughn testified that Cheryl never indicated to her that she doubted that they were team players or that Vaughn was a team player, that Bakin never told her that she doubted that Vaughn and the other workers wanted the business to succeed and that Bakin never told her she didn't think Vaughn and the other players were team players. (TR 76-77). Vaughn testified that Cheryl never told her that she or the other workers were not there to help her. (TR 78) Vaughn testified that after she was elected by Paul and Kaydi to talk to Cheryl in the white van, she did not have any more meetings with Paul or Kaydi about Cheryl. Vaughn testified she was never elected again to tell Cheryl anything and that there was never any other employee ever elected by the group to tell Cheryl anything. (TR 78).

While admitting that Cheryl was responsible for the end product that goes out of the shop and it was not her or Paul's responsibility to determine whether a product is good or bad, and it was not her nor Paul's responsibility for determining whether a product should be used or shouldn't be used, she decided to ask Paul about the condition of the gerber daisies, rather than



Cheryl. (TR 78 – 80). Vaughn testified that when she first had a discussion on October 20, 2017 with Cheryl about the hydrangeas, she did exactly what Cheryl told her to do and did not discuss Cheryl's instruction to her with Paul. (TR 80). Vaughn testified she did not argue with anybody about sorting the hydrangeas and that she just did it. (TR 81). The next event that occurred, according to Vaughn, was the incident with gerber daisies where Cheryl told her to trim the flowers and put them in a hydrator, or a hydrating solution, or in water. (TR 81). Vaughn explained the reason for her reacting differently to Cheryl's directive about the hydrangeas than she did about Cheryl's directive regarding the gerber daisies as that when Cheryl told her about the gerber daisies, "it was a mild yell and I could tell that she was already stressed out." (TR 81-82). When asked to explain why Vaughn just wouldn't follow the directive for the daisies the same as she did for the hydrangeas, she said she did not because the flowers were rotten. (TR 82-83). Vaughn testified that when Cheryl came over to she and Paul to look at the flowers, Cheryl told her that they needed to shut the fuck up and follow directions and that they didn't need to be speaking to one another. (TR 83). Vaughn admitted that there was nothing wrong with Cheryl saying that to her and that Cheryl has the right to tell her what to do, as the employer. (TR 84). Vaughn testified the only problem she had with Cheryl telling her what to do on the 20<sup>th</sup>, was her tone of voice. Id. Vaughn testified that October 20, 2017 was the first time she had ever observed Cheryl yelling to that magnitude and that it was obvious to her that Cheryl was extremely upset, for the first time since January. (TR 85-86). While Vaughn testified she heard Bakin yell at various people on the phone, she never saw Bakin act that way regarding any other employee at Parkway Florist. (TR 86).

Vaughn admitted that she sent Bakin text messages on Sunday, October 22, 2017. (Exhibit R-1, TR 89). In discussing the content of the text messages, Vaughn was asked why she



didn't mention the way Bakin treated other employees in those text messages. (TR91) Vaughn responded "Because that happened – I wasn't going to speak for other people". Id.

Vaughn admitted that the whole context of the text messages was about how Cheryl Bakin treated her and that in her text messages, Vaughn did not mention the way that Bakin treated other employees. (TR 90-91). Vaughn testified that the only time she ever spoke for any of the other employees was when she had the discussion with Cheryl Bakin in the white van on the way to the White Barn. (TR91) The time in the white van was the only time Vaughn ever spoke for other people. (TR 91).

When asked to describe questions that were asked of her instead of being asked of Cheryl, by other employees, Vaughn described a new employee, Betsy, asking her where the clippers were, where the bucket was, where the hydroquick was and where things were in the shop. (TR 102). Vaughn admitted that Betsy did not ask her those questions because of the way Cheryl reacted, but because she and Betsy were directly across the counter from each other. Id. Vaughn admitted she didn't know what other people would have asked Cheryl versus her and stated "how am I supposed to know that?" (TR 103). Vaughn admitted that when she said to Cheryl "the reason we ask each other is because we can't ask you," the only person she could have been talking about at that time was herself Id. Vaughn went on to admit that the only person she had knowledge of asking questions of other people, rather than Cheryl, when she mentioned that to Cheryl on October 20, 2017, was her. (TR 104).

On re-direct examination, Vaughn admitted that prior to October 20, 2017, she never discussed with any co-workers any method for dealing with situations when she had a question and Ms. Bakin was in a bad mood. (TR 142). Vaughn also testified on re-direct examination that she never gave any expressions to show that the yelling was affecting her whenever Cheryl

yelled at her or around her and that prior to October 20 she had seen Cheryl Bakin yell “several times.” (TR 143-144). Ms. Vaughn admitted that as chief designer, Cheryl Bakin has the final say so on how something gets done and that she didn’t have any idea how many times Bakin told Paul what she wanted him to do, before losing her temper. (TR 145).

Vaughn admitted that it’s not too much for an employer to expect of an employee to do what they are told. (TR 146).

Paul Cavalero provided relevant testimony in connection with Jo Ann Vaughn’s claim. Paul Cavalero testified that on October 20, 2107, Jo Ann asked him to take a look at some pink gerber daisies that she was cleaning. (TR 288). Cavalero testified that he walked over to Jo Ann and took a look at the flowers and they were soft and wilted, so he turned and said to Cheryl that she might want to take a look at them. Id. Cavalero’s recollection of what Cheryl said was “I have already ordered those twice because of color. I can’t afford to order them again. Make them work.” Id. Cavalero testified that he then told Jo Ann Vaughn to cut the gerber daisies and put them in warm water then he went back to his desk and continued to work on a flower arrangement. (TR 289).

Cavalero’s recollection is that approximately thirty seconds later, Jo Ann Vaughn said to him “Paul, the stems are slimy.” Id. And that he went to take a look at them. Id. Cavalero testified that Cheryl then interjected and said “Shut the fuck up about the gerbers. I don’t want to hear any more about the gerbers.” Id.

Cavalero testified that Bakin was yelling and screaming and that as she was getting more and more agitated, he reached over and touched her on the shoulder and said “Cheryl, you may want to take a breath. You are getting rude.” (TR 290). Cavalero then says that Bakin screamed at him “I’ll be fucking rude if I want to.” That she was screaming and that he responded by

saying “Oh, no. You are not going to be fucking rude to me. I bust my ass for you. I give up my days off. I work when you need me to. You’re not going to be fucking rude to me.” (TR 290-291). Cavalero then yelled some more as he was leaving to go out into the parking lot and yelled again “You will not be fucking rude to me. I do everything you want me to do. I bust my ass for you. You won’t be fucking rude to me.” And he went outside. (TR 291).

On cross-examination, Cavalero admitted that he has no idea what Jo Ann Vaughn said to Cheryl Bakin on October 20, 2017. (TR 300). Cavalero testified that he never had any discussion with Cheryl Bakin about people asking her questions and he never observed any other employee at Parkway have a discussion with Cheryl Bakin about asking her questions. (TR 305). Cavalero said he was part of a discussion among employees whereby it was decided that someone would tell Cheryl that they were all team players and all on her side and all in this together, not exactly in those words, but there was a discussion about having a discussion with Cheryl. *Id.* Cavalero said that the discussion concerning these items never happened. (TR 306).

**B. *Paul Cavalero v. Parkway Florist, Inc.*, Case No. 06-CA-217020**

Paul Cavalero has charged that on January 5, 2018, he was discriminated against by Bakin through a reduction in his scheduled hours and that on or about March 9, 2018, Parkway further discriminated against him by terminating him in retaliation for and in order to discourage protected concerted activities. The Region has alleged that Parkway took these actions against Cavalero because of his participation in an NLRB investigation against Parkway and in order to discourage employees from engaging in such activities. It is further alleged in Cavalero’s charge that Cheryl Bakin interrogated employees regarding their participation in an NLRB investigation against Parkway in order to discourage employees from engaging in such activities.



In support of its charge, the Region presented the testimony of Paul Cavalero and Alexandra Chisolm.

As far as Cavalero's testimony is concerned, he testified that he never had any discussion with Cheryl Bakin about any involvement that he had with the National Labor Relations Board. (TR 301). Cavalero testified that he never had any discussion with Cheryl Bakin about his involvement with the National Labor Relations Board in connection with Jo Ann Vaughn's case or with his own case. Id. Cavalero testified that he did have a conversation with Kaydi Gratzner, Betsy Giufre and Alexandra Chisolm on November 28, 2017, the day after Cavalero gave an Affidavit to the NLRB in connection with Jo Ann Vaughn's case. (TR 294). Cavalero testified that he spoke with these three co-workers in the store and that he told them what went on, what he told the NLRB and how the Affidavit process worked. (TR 294-295). Cavalero had a subsequent conversation with Alex Chisolm on January 3, 2018, which took place in the store, around lunch time while he and Chisolm were eating lunch. (TR 295). Cavalero testified that he initiated the conversation with Alex because Cheryl and Alex had gone on an event together alone. Cavalero asked Alex if Cheryl had asked her about giving the Affidavit and Alex told him that yes, she did. (TR 295). Alex told him that Cheryl asked her about the Affidavit and Alex told Cheryl "I didn't give the Affidavit and I don't want involved in this." (TR 296).

Alex Chisolm testified that she never told Cheryl Bakin that Paul Cavalero had given an Affidavit to the NLRB and never heard Paul tell Cheryl that he had given an Affidavit to the NLRB. (TR 196). Alex Chisolm is a part-time employee at Parkway and began working there around February, 2011. Cheryl Bakin is her sole supervisor or manager and as long as she worked there, there have never been any other supervisors or managers. (TR 153).



Prior to the summer of 2018, Alex worked probably three or four days a week or 24 to 32 hours as an assistant with job responsibilities to answer the phone, type-up orders, help with general clerical work, process flowers, general cleaning duties, sweeping and mostly answering phones. (TR 155).

Alex testified that she had a conversation with Paul Cavalero about her being contacted by an investigator from the NLRB, sometime in November. (TR 171). The conversation occurred downstairs of the shop at Paul's workbench and Alex testified she would not have knowingly had a conversation with Paul about the NLRB investigation if she thought Cheryl was close enough to hear it. (TR 172). Alex testified in that instance that she told Cavalero that some guy from the Labor Board called her and asked her to give a statement and she told him she was not interested unless legally subpoenaed. Alex testified Cavalero explained to her that just the process of giving a statement I would just have to come in and tell the truth, basically. Paul told her he had given an Affidavit. (TR 172). Alex also testified that she talked with Cheryl about the investigation of Jo Ann Vaughn's Charge and that in two instances, Cheryl asked her questions about the NLRB investigation. (TR 172-173). The first time Alex testified that Cheryl asked her about the NLRB investigation was in December 2017 where Alex contends that Cheryl asked her if Alex had been contacted at all by the NLRB and if Alex knew if anyone else had been contacted. (TR 173-174). Alex stated that Cheryl said that there had been a lot of drama going on and Cheryl asked her if she had heard anything from the Labor Board regarding her employment or her place of employment and if she had heard if anyone else had been in contact with them or had involved themselves with them in any way. (TR 174). Alex responded to Cheryl that she didn't know and had no interest in being involved. Alex testified "I just said, you know what, Cheryl, like you've been a good boss to me, good employer, whatever issues there

having, I'm not having, so I'm just her to do my job as best I can and stay out of it as much as possible." (TR 175).

Alex testified that in April 2018, when she and Cheryl were alone in the shop, Cheryl asked her "very generally if I had heard anything new or anything from the NLRB or if I had heard anything from Jo Ann or Paul regarding the NLRB." (TR 176). Alex testified that she told Cheryl Bakin that she hadn't heard from any of them and that she was not interested in reaching out. She told Cheryl she had been contacted by the NLRB but that she was not interested in giving a statement or anything like that. (TR 177). Alex testified that Jo Ann Vaughn had confided in her that Jo Ann felt that her talents were not being utilized to the best of her ability. Jo Ann felt that she was capable of doing more and that Cheryl kind of held the reigns too tight, so to speak, and was kind of micromanaging some of the work Jo Ann was performing. (TR 179). Alex further testified that she guessed that she had talked to her co-workers about how sometimes when Cheryl gets stressed, she can get a little "snippy," meaning tense, stressed, kind of flustered. (TR 179).

Alex testified that she never told Cheryl Bakin that Paul Cavalero had given an Affidavit to the NLRB and she never heard Paul tell Cheryl that he had given an Affidavit to the NLRB. (TR 196). Alex testified that in neither of the conversations she had with Cheryl Bakin, in December 2017 or April 2018 did Cheryl tell her one way or another what to do regarding the NLRB investigation and really didn't instruct Alex one way or another. (TR 197). Alex reiterated that when Cheryl asked her if anyone else was contacted by the NLRB she did not tell her and instead that Alex had no idea. Id.

Alex testified that in January of 2018, she had a conversation with Paul Cavalero about whether Cheryl asked Alex about the investigation and she told Paul that Cheryl had asked her if

she had heard anything and she told Cheryl that she didn't know. (TR 198). At no time did Cheryl encourage Alex or discourage Alex from participating in the NLRB investigation. (TR 198-199). All that Cheryl told her during their discussions was "I'm so sorry that you have to be wrapped up in this." (TR 199).

Parkway has contended that there were legitimate economic reasons for the reduction in Paul Cavalero's hours in January 2018 and his ultimate termination on March 9, 2018 and in connection with those contentions advanced the testimony of Cheryl Bakin.

First, Ms. Bakin testified that between March 9, 2018, the day that Paul Cavalero was terminated and the time that she hired Christopher Stewart, she and she alone did the design at Parkway (TR 254). Ms. Bakin explained that she fully intended, when Paul Cavalero was terminated, to work through March and probably most of April by herself with a delivery driver and possibly somebody answering the phones. She was notified by her primary care physician about a week after Paul was terminated that she had a third abnormal chest x-ray and that there was a strong possibility that she was facing a diagnosis of lung cancer. Ms. Bakin testified that she had some very, very hard decisions to make that had to be made quickly. Ms. Bakin testified she had a number of commitments to customers and she needed to get somebody in to work with her that could do for her what needed to be done while she went and had medical tests done and a diagnosis as to what was really going on. (TR 254).

Ms. Bakin testified she had some tests done in mid-April and the tests are inconclusive and she is actually scheduled for early November to go back for another round of tests. Ms. Bakin testified she has a very serious illness hanging over her head, that she is already a two-time cancer survivor, so it is not a surprise to be facing cancer for a third time. (TR 254-255).



Cheryl Bakin testified she probably would not have hired Chris Stewart as soon as she did except for the medical diagnosis and that she was anticipating possibly hiring someone again on a part-time basis toward the end of April. (TR 255).

Ms. Bakin went on to testify about Cavalero's conduct on March 9, 2018, immediately after his termination from employment by Parkway and stated that but for that conduct, she would have considered calling Cavalero back to work following her unplanned medical diagnosis. (TR 257).

Ms. Bakin testified that upon Cavalero's termination, he verbally threatened her, told her he would own her business and own her house, he was screaming and went outside to the parking lot where he paced back and forth screaming at someone on a cell phone. Ms. Bakin testified she went to the door and asked him to give her key back and instead of handing it to her, he took the key for the store off his key ring and threw it at her. (TR 261-262). That was the behavior, according to Ms. Bakin that caused her not to consider bring Cavalero back in early April of 2018. (TR 262).

On direct examination, Cheryl Bakin testified about both the events of October 20, 2017 (TR 346-347) and the downturn in Parkway sales and revenue that led to the need for first a reduction in Cavalero's hours, and second, the need for his ultimate termination from employment on March 9, 2018 (TR 364, 367-368).

Ms. Bakin testified, unequivocally, that she never had a discussion with Paul Cavalero about his participation in the NLRB investigation and that she never had a discussion with him or anybody else at work about Jo Ann Vaughn's participation. (TR 350-351). Ms. Bakin testified no one ever told her that Paul Cavalero had participated in the NLRB investigation, nobody told her Cavalero had made an Affidavit (TR 351). Ms. Bakin did testify that she had conversations



with Alex Chisolm about the NLRB investigation and that Alex advised her that Alex had been contacted by Eric Kelly from the NLRB and that Alex had refused to talk with him and told Bakin that Alex didn't want to participate and that she had nothing to say. Id.

Ms. Bakin testified she did not question Chisolm about anything having to do with the NLRB investigation and that in a second conversation with Alex Chisolm, after Paul was terminated and after he had filed an Action with the NLRB, Bakin testified she made Alex aware that Paul had filed an Action and simply stated to her that she might be contacted again by the NLRB. (TR 352). Ms. Bakin testified that the first conversation with Alex occurred sometime in mid- to late-December 2017 and that in the first conversation with Alex, she "simply told her that this was a serious matter and that she could possibly be subpoenaed and if she was subpoenaed then she would have to appear and testify. That really was all." (TR 353). Aside from what she testified to, she did not have any other advice or counseling for Ms. Chisolm after Cavalero had filed his case. Id. Ms. Bakin testified that in November of 2017, she cut back overtime hours across the board because sales were down and cash flow, more importantly, was way down. Id.

Ms. Bakin testified she used reports that were labeled "data used to make decisions regarding staffing overtime and hours, comparing 2016 to 2017, November and December and comparing January to February, 2017 to 2018" were what she used to determine to cut-back overtime. (TR 357, Exhibit R3).

With regard to Exhibit R6, Ms. Bakin testified that it was the most telling part where she compared sales data by month and Exhibit R3, R4, R5 and R6 support Parkway's position that Cavalero's were reduced due to an economic downturn. (TR 362). In addition, Exhibits R7 and R8, comparison reports for months in 2016 to 2017 also show a significant downturn in

Parkway's business. (TR 362). Ms. Bakin testified that Paul Cavalero was the highest paid employee of Parkway in 2017 and that in January of 2018, she reduced his work hours by one (1) day per week, eight (8) hours per week, in order to reduce payroll and make the payroll hours match the work that Parkway had available. (TR 364). Ms. Bakin testified about the lack of weddings and special events scheduled in January 2018, that the normal business in January is at least a couple of weddings, funeral work and things like that and the daily business wasn't there so she had to cut hours. (TR 364). Ms. Bakin explained that as of January 2018, Jo Ann Vaughn was already gone, Betsy Guifre had tendered her resignation and the only other part-time employee was Alex Chisolm. The only two (2) employees that Cheryl had working were Kaydi Gratzner and Paul Cavalero (TR 365). Ms. Bakin testified that Exhibit R9 reflects the slow down in January and February 2018 and the only uptick in hours worked was during the week of Valentine's Day which is generally a busy week for Parkway. (TR 366). Ms. Bakin testified concerning Cavalero's termination that "I had to make the very painful decision that I could no longer afford him. As I stated earlier, we had no events in January and none in February. We had one small event the first Friday of March and that was it. I didn't have the money to continue to pay him. So I had to let him go." (TR 367-368).

Ms. Bakin testified that on March 12<sup>th</sup> or 13<sup>th</sup> she was contacted by her PCP concerning the medical conditions discussed above and that was the reason for her hiring Mr. Stewart. (TR 368-369).

On re-direct examination, Bakin examined Exhibit R3 on the second page and explained that the handwritten portion which says "sales off 2018 to 2017 \$6,817" was an accurate number and that in all of the Exhibits 3 through 9, without counsel going through each and every one,

they indicate whether sales were up or down. (TR 391). Ms. Bakin went on to state that all of the numbers are accurate. Id.

Ms. Bakin did explain the reason for the downturn in her business in late-2017 and early-2018 as being the result of her coming down with pneumonia and shingles after Valentine's Day 2017. (TR 392). Ms. Bakin explained that she wasn't at the store in the daytime and was able to do very very few wedding and special event appointments. She explained that under normal circumstances, she would have been meeting with brides or people for events in late-Summer into Fall and early-Winter and those meetings didn't happen. Parkway didn't get that business booked so the business went elsewhere. (TR 392-393). She went on to state that while she was sick in 2017 and unable to meet with brides or other potential customers and book the business for later in the year or early-2018, there was no one else at the store who could fill-in for her and do that. (TR 393).

### Issues

- A. DID GENERAL COUNSEL PRESENT SUFFICIENT EVIDENCE TO PROVE THAT JO ANN VAUGHN ENGAGED IN PROTECTED CONCERTED ACTIVITY AND WAS TERMINATED FROM EMPLOYMENT BECAUSE SHE PARTICIPATED IN SUCH PROTECTED ACTIVITY?
- B. DID GENERAL COUNSEL PRESENT SUFFICIENT EVIDENCE TO SHOW THAT PAUL CAVALERO WAS RETALIATED AGAINST FOR HIS PARTICIPATION IN THE JO ANN VAUGHN INVESTIGATION BY FIRST HAVING HIS HOURS CUT IN JANUARY 2018 AND THEN BY BEING TERMINATED FROM EMPLOYMENT ON MARCH 9, 2018?
- C. DID CHERYL BAKIN IMPROPERLY OR ILLEGALLY INTERROGATE AN EMPLOYEE ABOUT THAT EMPLOYEE'S OR OTHER EMPLOYEES' PARTICIPATION IN THE NLRB INVESTIGATION?



## Argument

### **I. JO ANN VAUGHN CASE**

GENERAL COUNSEL DID NOT PRESENT SUFFICIENT EVIDENCE TO PROVE THAT JO ANN VAUGHN ENGAGED IN PROTECTED CONCERTED ACTIVITY AND WAS TERMINATED FROM EMPLOYMENT BECAUSE SHE PARTICIPATED IN SUCH PROTECTED ACTIVITY.

Parkway is charged, in the Vaughn case, with sending Vaughn home early on October 20, 2017 and discharging her from employment on October 23, 2017, as the result of Vaughn engaging in “protected concerted activity” under the Act.

In *Good Samaritan Medical Ctr. V. NLRB*, 858 F.3d 617 (1<sup>st</sup> Cir. 2017), the court discussed the analysis which must be undertaken to determine whether or not actions of a single employee can be deemed to be protected “concerted activity” engaged in for “mutual aid or protection, or whether such actions or complaints should properly be classified as individual concerns not protected under the Act.

The court stated that *Section 8(a)(1)* of the National Labor Relations Act (hereinafter “Act or NLRA”) makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [section 7 of the Act].” 29 U.S.C. § 158(a)(1). One of the rights guaranteed to employees in section 7 of the Act is the right to “engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157. See *El Gran Combo de Puerto Rico v. NLRB*, 853 F.2d 996, 1002-004 (1<sup>st</sup> Cir. 1988).

As the Supreme Court has noted, "the term 'concerted activity' is not defined in the Act . . . ." *City Disposal Systems*, 465 U.S. at 830. The Court explained in *City Disposal Systems* that in enacting *section 7*, "Congress sought generally to equalize the bargaining power of the employee with that of his employer by allowing employees to band together in confronting an employer regarding the terms and conditions of their employment." *Id.* at 835. The Court stated that while "concerted activity" plainly "embraces the activities of employees who have joined together in order to achieve common goals," *Id.* at 830, what is not clear from the language of the Act is "the precise manner in which particular actions of an individual employee must be linked to the actions of fellow employees in order to permit it to be said that the individual is engaged in concerted activity." *Id.*

In its *Meyers* decisions, the Board clarified the test it applies to determine whether an employee's actions are linked sufficiently to the actions of fellow employees so as to be deemed "concerted." *See Meyers Indus., Inc.*, 268 N.L.R.B. 493 (1984) ("*Meyers I*"), *rev'd sub nom. Prill v. NLRB*, 244 U.S. App. D.C. 42, 755 F.2d 941 (D.C. Cir.), *cert. denied*, 474 U.S. 948 (1985), *on remand*, *Meyers Indus., Inc.*, 281 N.L.R.B. 882 (1986) ("*Meyers II*"), *aff'd sub nom. Prill v. NLRB*, 266 U.S. App. D.C. 385, 835 F.2d 1481 (D.C. Cir. 1987), *cert. denied*, 487 U.S. 1205 (1988). In *Meyers I*, the Board held that safety complaints concerning a company truck made by a single employee acting on his own were not "concerted activity" within the meaning of *section 7* of the Act. The Board stated that an employee's action may be deemed "concerted" for purposes of *section 7* only if the action is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers I*, 268 N.L.R.B. at 497 (footnote omitted). In *Meyers II*, the Board explained that its objective standard of concerted activity "encompasses those circumstances where individual employees seek to initiate or to

induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." *Meyers II*, 281 N.L.R.B. at 887.

In *Manimark v. NLRB*, 7 F.3d 547 (6<sup>th</sup> Cir. 1993), the court held that the Act accords employees the right to form and join unions and to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. § 157. It is deemed an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of" these rights. 29 U.S.C. § 158(a)(1). To establish a violation of §§ 157 and 158(a)(1), the Board must show "that the employee was engaged in such protected concerted activity, that the employer knew of the activity and its concerted nature, and that the employee's protected activity was a motivating factor prompting some adverse action by the employer." *Ajax Paving Indus., Inc. v. NLRB*, 713 F.2d 1214, 1216 (6<sup>th</sup> Cir. 1983). The employer may then affirmatively defend by proving by a preponderance of the evidence that the employee would have been discharged in any event for unprotected conduct. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400, 403, 76 L. Ed. 2d 667, 103 S. Ct. 2469 (1983). Here it is thus incumbent on the General Counsel to prove, by a preponderance of the evidence, that Vaughn was engaged in protected concerted activity on October 20, 2017, that Bakin knew of the concerted nature of the activity and that Vaughn's termination was motivated by the protected activity. General Counsel has wholly failed in carrying its burden.

Applying this standard to the instant case leads to the conclusion that the statements of Jo Ann Vaughn on October 20, 2017, do not rise to the level of "concerted activity" and are thus not protected under Section 8(a)(1) of the Act.

By Vaughn's own admission, the statement she made to Bakin following the



argument about the Gerber daisies on October 20, 2017, was made on her own behalf and not on behalf of any other employees. (TR 103) Vaughn testified that the last time she engaged in any activity on behalf of other employees was following the September 2017 discussion between her, Paul Cavalero and Kaydi Gratzner, where she was elected to approach Bakin and reaffirm that everyone at the flower shop was on Bakin's team and that everyone wanted the shop to succeed. This conversation took place in the white van on the way to the White Barn for a wedding and Vaughn testified that after she said that to Bakin, Cheryl did not have much of a response. This conversation, as the content was related by Vaughn, did not even raise any common concern of the employees and cannot be construed as having been made for the mutual aid and protection of anyone. By her own admission, Vaughn did not discuss Bakin's tone, abruptness or rude demeanor in that conversation and merely iterated that they were all on the same team. Under the standards set forth above, the conversation in the white van on the way to the wedding at the White Barn does not even rise to the level of protected concerted activity.

The next events involving Vaughn that must be analyzed in light of the law, as set forth above, are the events of October 20, 2017. Vaughn admitted that the statement she allegedly made to Bakin after Cavalero yelled at Bakin and left the building were made on her own behalf and for herself only. This fact is corroborated by the text messages sent to Bakin over the following weekend, where Vaughn repeatedly referred to the discomfort she felt, the fact that she thought Bakin's attitude was inappropriate and that she couldn't work at Parkway under those circumstances. (Exhibit R-1) Vaughn never mentions other employees or their concerns in those text messages and never indicates she is voicing any type of a group complaint.

It should also be noted that the record is void of any testimony that any other employee would have joined Vaughn in her individual complaint against Bakin's attitude, despite the fact

that Vaughn, Cavalero and Gratzner met in the parking lot immediately after Vaughn was sent home on October 20, 2017 and immediately after her comment to Bakin. Vaughn testified she told Cavalero and Gratzner what she had said to Bakin yet there was no testimony that either one or both of them said they wanted to join with her and voice the complaint, jointly, to Bakin. Cavalero testified that during the argument with Bakin on October 20, 2017, he screamed "you will not treat me that way" and "I will not be treated that way". Contrary to General Counsel's position, there is no indication in the record that Cavalero in any way, came to Vaughn's aid or voiced any complaint to Bakin about the way anyone other than he, individually, was being treated.

Like the circumstances involving the employee in *Meyers I*, there is no indication in the record that Vaughn's comment was engaged in with or on the authority of other employees, and not solely by and on behalf of Vaughn herself. In fact, Vaughn admitted that the only person she was referring to when she made the comment to Bakin on October 20, 2017 was herself. As such, the comment Vaughn made to Bakin on October 20, 2017 does not rise to the level of protected concerted activity.

Because Vaughn's conduct on October 20, 2017, was not concerted, the Court need not address the question of whether concerted activity motivated her discharge. See *NLRB v. Ogle Protection Serv., Inc.*, 375 F.2d 497, 505 (6th Cir.) (employer may discharge employee "for any reason, whether it is just or not," as long as it is not for protected activity), **cert. denied**, 389 U.S. 843, 19 L. Ed. 2d 108, 88 S. Ct. 84 (1967).

## II. PAUL CAVALERO CASE

GENERAL COUNSEL DID NOT MAKE A PRIMA FACIE CASE THAT PAUL CAVALERO WAS RETALIATED AGAINST FOR HIS PARTICIPATION IN THE JO ANN VAUGHN INVESTIGATION BY FIRST HAVING HIS HOURS CUT IN JANUARY 2018 AND THEN BY BEING TERMINATED FROM EMPLOYMENT ON MARCH 9, 2018 AND IF THEY DID THEN BAKIN PRESENTED SUFFICIENT EVIDENCE OF A LEGITIMATE NONDISCRIMINATORY REASON FOR THOSE EMPLOYMENT ACTIONS.

Parkway is charged, in the case involving Paul Cavalero, with having reduced Cavalero's hours in January 2018, in retaliation for his participation in the Jo Ann Vaughn investigation by the NLRB and also for ultimately terminating Cavalero's employment on March 9, 2018, again in retaliation for Cavalero's participation in the Vaughn case.

In *Wright Line*, 251 N.L.R.B. at 1083 the issue was whether an employee was terminated because of protected conduct or because of his unprotected behavior. The NLRB held that the General Counsel had to make a prima facie showing "that the employee's conduct protected by § 7 was a substantial or a motivating factor in the discharge." *Transp. Mgmt.*, 462 U.S. at 399-400. This test is satisfied by demonstrating: "(i) the employee's engagement in the protected activity; (ii) the employer's knowledge of that activity; (iii) the employer's antipathy toward it; and (iv) a causal link between the antipathy and the adverse employment action." *E.C. Waste, Inc. v. NLRB*, 359 F.3d 36, 42 (1st Cir. 2004) (citing *Transp. Mgmt.*, 462 U.S. at 401-3). The defendant can either rebut this prima facie showing, or it can seek to prove "by a preponderance of the evidence that the discharge rested on the employee's unprotected conduct as well and that the employee would have lost his job in any event." *Transp. Mgmt.*, 462 U.S. at 400. In other



words, "proof that the discharge would have occurred in any event and for valid reasons amount[s] to an affirmative defense on which the employer carries the burden of proof by a preponderance of the evidence." **[\*\*27]** Id.

Here, the General Counsel has wholly failed to present any evidence that Cheryl Bakin, the individual who made the decision to reduce Cavalero's hours and ultimately terminate his employment, knew that he was participating in or had participated in the Vaughn investigation. Alex Chisolm, the only witness called by General Counsel who testified they had any knowledge of Cavalero's participation in the Vaughn case, clearly and repeatedly stated that she never told Cheryl Bakin that Cavalero had given a statement or affidavit in the Vaughn case. Cavalero testified that he never told Bakin about his participation in the Vaughn investigation and the emails between the NLRB investigator, Eric Kelly and Parkway's counsel that were offered into evidence by General Counsel, reiterate the position of General Counsel that they have an absolute policy of confidentiality regarding the identity of participants in investigations. Despite an inquiry by attorney Linkosky as to the identity of the participants in the Vaughn investigation, neither the investigator nor General Counsel would disclose any of the participant's identities.

Because there was no evidence presented by General Counsel that Bakin had any knowledge of Cavalero's participation in the Vaughn investigation, General Counsel has failed to satisfy the second prong of the ***Wright Line*** test, that being a prima facie showing that the employer, in this case Parkway, had knowledge of Cavalero's participation in the Vaughn investigation, which is the protected activity that Parkway is accused of retaliating against Cavalero for. This absence of this evidence alone should be sufficient to warrant a dismissal of the Cavalero complaint.

If this Honorable Court were to find, despite the absence of such a prima facie showing, that Bakin somehow know of Cavalero's participation in the Vaughn investigation, then Bakin has presented sufficient evidence to show that Cavalero's reduction in hours and ultimate termination was as the result of a downturn in Parkway's business in late 2017 and early 2018 and had nothing to do with his participation in the Vaughn investigation. Exhibits R3 through R9 are self-explanatory and clearly show how Parkway's business in late 2017 and early 2018 was significantly down over prior years. Cheryl Bakin testified that she intended, following Cavalero's termination on March 9, 2018, to do all the floral design work at Parkway herself, at least through April 2018. As Bakin testified, she received a medical diagnosis between March 9, 2018 and March 13, 2018, that would require her to miss a significant time from work and was forced to hire a replacement for Cavalero. As Bakin testified, she couldn't even consider calling Cavalero back to work, given his behavior following his termination, his threats and his throwing the key at her. Cavalero did not dispute these events.

Based upon the evidence submitted by Bakin, should this Court somehow find that Bakin knew about Cavalero's participation in the Vaughn investigation, Bakin has presented sufficient evidence to show, by a preponderance, that Cavalero's reduction in hours in January 2018 and termination on March 9, 2018, was caused by a downturn in business and had nothing whatsoever to do with Cavalero's participation in the Vaughn case.

CHERYL BAKIN DID NOT IMPROPERLY OR ILLEGALLY INTERROGATE AN  
EMPLOYEE ABOUT THAT EMPLOYEE'S OR OTHER EMPLOYEES'  
PARTICIPATION IN THE NLRB INVESTIGATION.

The final issue to be decided by this Honorable Court concerns Bakin's alleged  
"interrogation" of Alex Chisolm in contravention of Section 8(a)(1) of the Act.

In *Caterpillar Logistics v. NLRB*, 2016 U.S.App. Lexis 14595 (6<sup>th</sup> Cir. 2016) the Court  
set forth the law regarding the legality of interrogation of an employee in the context of union  
activity. The Court stated "[T]he basic test for evaluating the legality of an interrogation is  
'whether under all of the circumstances the interrogation reasonably tends to restrain, coerce, or  
interfere with rights guaranteed by the Act.'" *Dayton Typographic Serv., Inc. v. NLRB*, 778  
F.2d 1188, 1194 (6<sup>th</sup> Cir. 1985) (quoting *Rossmore House*, 269 N.L.R.B. 1176, 1177 (1984)).  
"When assessing the coercive tendency of an interrogation, the [Board] looks at, among other  
things, the background, the nature of the information sought, the questioner's identity, and the  
place and method of interrogation." *Id.* (citation omitted).

An unfair labor practice "occurs when substantial evidence demonstrates that the  
employer's [actions], considered from the employees' point of view, had a reasonable tendency to  
coerce." *Dayton Newspapers, Inc. v. NLRB*, 402 F.3d 651, 659 (6<sup>th</sup> Cir. 2005) (citation  
omitted). A finding of "actual coercion" is not required. *Id.* (citation omitted).

Here, it is clear from Alex Chisolm's testimony that Bakin made absolutely no attempt to  
restrain, coerce or otherwise interfere with the investigations involving Vaughn or Cavalero.

The *First Amendment* permits employers to communicate with their employees  
concerning an ongoing union organizing campaign so long as the communications do not contain



a threat of reprisal or force or promise of benefit. This right is recognized in §8(c) of the National Labor Relations Act (NLRA), specifically 29 U.S.C.S. § 158(c). If NLRA §8(a)(1), specifically 29 U.S.C.S. § 158(a)(1) deprived the employers of any right to ask non-coercive questions of their employees during such a campaign, the NLRA would directly collide with the Constitution. What the NLRA proscribes is only those instances of true "interrogation" which tend to interfere with the employees' right to organize. ***Graham Architectural Products Corp. v. NLRB***, 697 F.2d 534 (3d Cir. 1983).

Like the employer in ***Graham Architectural***, Bakin had a right to ask non-coercive questions of Alex Chisolm and based on the testimony of Chisolm, that is exactly what occurred.

Alex Chisolm testified that in neither of the conversations she had with Cheryl Bakin, in December 2017 or April 2018 did Cheryl tell her one way or another what to do regarding the NLRB investigation and really didn't instruct Alex one way or another. (TR 197).

Chisolm's testimony about her conversations with Bakin is largely corroborated by Cheryl Bakin's own testimony. Ms. Bakin testified that she had conversations with Alex Chisolm about the NLRB investigation and that Alex advised her that Alex had been contacted by Eric Kelly from the NLRB and that Alex had refused to talk with him and told Bakin that Alex didn't want to participate and that she had nothing to say. (TR 351)

Ms. Bakin testified she did not question Chisolm about anything having to do with the NLRB investigation and that in a second conversation with Alex Chisolm, after Paul was terminated and after he had filed an Action with the NLRB, Bakin testified she made Alex aware that Paul had filed an Action and simply stated to her that she might be contacted again by the NLRB. (TR 352). Ms. Bakin testified that the first conversation with Alex occurred sometime in mid- to late-December 2017 and that in the first conversation with Alex, she "simply told her

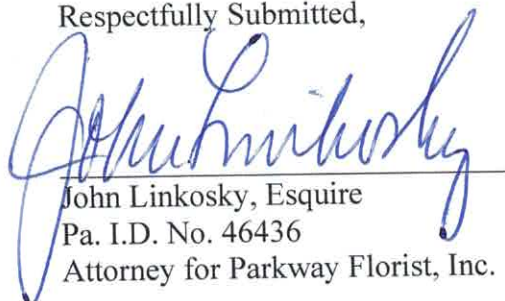
that this was a serious matter and that she could possibly be subpoenaed and if she was subpoenaed then she would have to appear and testify. That really was all.” (TR 353).

Based on the testimony, it is clear that Bakin did not illegally interrogate Chisolm in connection with her, or any other employee’s, involvement in the Vaughn or Cavalero investigations.

### Conclusion

For the foregoing reasons, Respondent, Parkway Florist, Inc. respectfully requests this Honorable Court to dismiss the complaints filed by Jo Ann Vaughn and Paul Cavalero and further to issue a finding that Cheryl Bakin did not unlawfully interrogate any employees, including but not limited to Alex Chisolm, in connection with the pending NLRB investigations.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "John Linkosky", is written over a horizontal line.

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**Certificate of Service**

I hereby certify that a true and correct copy of the within Brief for Respondent has been served by electronic mail to the below-named parties on the date herein below set forth.

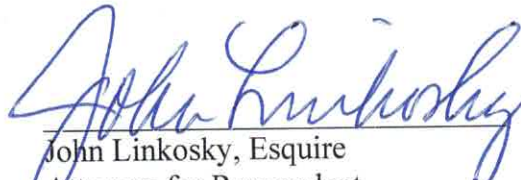
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Date: October 10, 2018

  
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